

**DATO' SRI MOHD NAJIB TUN HJ ABD RAZAK
v. TAN SRI AHMAD TERRIRUDIN MOHD SALLEH**

HIGH COURT MALAYA, KUALA LUMPUR
ALICE LOKE YEE CHING J
[JUDICIAL REVIEW NO: WA-25-136-04-2024]
6 OCTOBER 2025

Abstract – *The law on the role of the Attorney General ('AG') vis-à-vis a leave application under O. 53 of the Rules of Court 2012 is trite. He functions to sieve unmeritorious suits which include not only those that do not meet the procedural requirements set out therein, but which decided cases have termed as those which do not meet the threshold of an arguable case. All that the Attorney General's Chambers is required to do when served with the leave papers is to peruse them and address the court on whether there are grounds to refuse leave or otherwise. It is pure conjecture to attribute dishonourable conduct on the part of the AG merely from the stand taken to oppose the application, especially when the allegations are but mere speculation. The consequences of contempt proceedings are serious and the courts would be circumspect to act on mere supposition.*

CIVIL PROCEDURE: *Committal proceedings – Order of committal – Leave to apply for order of committal – Whether Attorney General ('AG') aware of existence of addendum order – Whether open to AG to direct officers to oppose application for leave under O. 53 of Rules of Court 2012 on ground existence of addendum order speculative – Whether tantamount to perverting course of justice – Whether AG breached duty of candour – Whether there was duty for AG to deny or confirm existence of addendum order at leave stage – Whether applicant failed to establish prima facie case of contempt – Whether leave to apply for order of committal ought to be dismissed – Rules of Court 2012, O. 52*

CIVIL PROCEDURE: *Judicial review – Leave – Application for – Proceedings – Functions of Attorney General ('AG') – Whether merely embarks on filtering process through his officers – Whether open to AG to direct officers to oppose application for leave under O. 53 of Rules of Court 2012 on ground existence of addendum order speculative – Whether tantamount to perverting course of justice – Whether AG aware of existence of addendum order – Whether there was duty for AG to deny or confirm existence of addendum order at leave stage*

This was the applicant's application for leave to apply for an order of committal pursuant to O. 52 of the Rules of Court 2012 ('ROC'). The applicant was charged in the High Court and found guilty of all the charges in what was commonly known as the SRC case. The Court of Appeal and the Federal Court subsequently dismissed the applicant's appeal against the

- A decision of the High Court. Consequently, the applicant was brought to the Kajang Prison to serve a term of 12 years imprisonment and to pay a fine of RM210 million. The applicant filed a petition for a complete and/or full pardon to Kebawah Duli Yang Maha Mulia Seri Paduka Baginda Yang Di-Pertuan Agong XVI ('DYMM YDPA XVI') in relation to his conviction and sentence in the *SRC* case, pursuant to art. 42 of the Federal Constitution ('FC'). Following the petition, the applicant filed further addendums to DYMM YDPA XVI for His Majesty's consideration, raising other new relevant developments in relation to the issue of pardon, particularly the dominant issue that the appellant had never been given a fair trial, nor a fair appeal. The Pardons Board for the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya, under the purview of the Minister in the Prime Minister's Department (Law and Institutional Reform) and the Director General of the Legal Affairs Division, announced that DYMM YDPA XVI had convened the 61st Pardons Board for the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya and His Majesty had ordered that the applicant's imprisonment be reduced to six years and the fine reduced to RM50 million ('main order'). By a series of incidents commencing, the applicant stated that he came to know of the existence of what was referred to as the addendum order, which allowed the applicant to serve the remainder of his reduced prison sentence under home arrest. However, this addendum order was not announced when the main order was announced on 2 February 2024. The applicant then wrote to several parties including the respondent, who was the then Attorney General ('AG'), to confirm the details of the addendum order as the latter had direct knowledge of the addendum order. As his inquiries met with no response, he then filed the instant judicial review application. The provisions of O. 53 of the ROC made it obligatory for the application for leave to be served on the Attorney General's Chambers ('AGC'). The AGC issued a letter, stating its grounds of objection to the leave application; firstly, the application was frivolous and vexatious, and secondly, the facts stated therein did not disclose an arguable case and was speculative in nature, and finally, that the ultimate subject matter of the application was non-justiciable nor amenable to judicial review. The High Court dismissed the O. 53 leave application. An appeal was filed thereafter to the Court of Appeal. At the hearing of the appeal, an application was made by the applicant to introduce additional evidence, *inter alia*, the addendum order. The notice of motion to introduce additional evidence was allowed by the Court of Appeal. The appeal against the refusal for O. 53 leave was also allowed. The AGC's appeal to the Federal Court against this decision was dismissed as a consequence of which the judicial review application was now to be heard on its merits. The present application was premised primarily on one crucial fact: the addendum order existed and that the respondent was fully aware of it. The applicant then contended that in view of its existence, it was not open to the respondent to direct his officers to oppose the O. 53 leave on the ground that the existence was speculative

as to do so was misleading and tantamount to perverting the course of justice. The respondent was also said to have breached his duty of candour and transparency by suppressing information on the existence of the addendum order. His actions clearly influenced the decision of the judge hearing the O. 53 leave, which resulted in his dismissing the leave application.

Held (dismissing application for leave to apply for order of committal):

- (1) The law on the role of the AG *vis-à-vis* O.53 leave is trite. He functions to sieve unmeritorious suits which include not only those that do not meet the procedural requirements set out therein, but which decided cases have termed as those which do not meet the threshold of an arguable case. Therefore, all that the AGC is required to do when served with the leave papers is to peruse them and address the court on whether there are grounds to refuse leave or otherwise. The AGC does not delve into the merits of the substantive judicial review application even if the AGC is to subsequently represent any of the respondents cited once leave is granted. (paras 27 & 28)
- (2) In the instant case, the AG was a putative respondent in these judicial review proceedings. However, the position of the AG at the O. 53 leave and where he was cited as a respondent in the substantive hearing were distinct and different. In the case of the former, the AG was served not in his capacity as a respondent but in his capacity as the AG under O. 53 r. 3(3) of the ROC. To reiterate, in a leave application, he merely embarks on a filtering process through his officers. Where there are reasons to oppose leave pursuant to decided authorities on the threshold to be met, then the officers of the AGC will attend court to present their arguments. (para 29)
- (3) It was pure conjecture to attribute dishonourable conduct on the part of the respondent merely from the stand taken to oppose the leave application. The act of contempt alleged was the direction given by the respondent to advance false arguments and deny the existence of the addendum order. In the absence of clear evidence showing that the respondent personally did as alleged and bearing in mind the role AGC plays in O. 53 leave applications, these allegations were but mere speculation. One could not infer a specific instruction to present untrue arguments only from the stand the respondent's officers took in opposing the leave application. The consequences of contempt proceedings are serious and this court would be circumspect to act on mere supposition. (para 30)
- (4) The addendum order was only sought to be introduced during the appeal in the Court of Appeal. Upon being allowed to introduce the addendum order, the applicant now contended that it existed and that the respondent was aware of it all along and must therefore be called to

- A account for misrepresenting otherwise. However, it was apparent that at the time of filing the leave application, even the applicant was uncertain as to its existence. The AGC was justified in making the objection to the leave application. Further, the duty of candour argument advanced by the applicant was misconceived. Implicit from the authorities on the duty of the AG when served with the leave application, was that there was no such duty imposed on the respondent in the position of the AG at the leave stage. There was no duty for the respondent to deny or confirm the existence of the addendum order at the leave stage. (paras 31-36)
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- C (5) Contempt is a serious matter, and should be pursued within a reasonable time. The inordinate delay in commencing the contempt proceedings was fatal to the applicant's application. The applicant had failed to establish a *prima facie* case of contempt. There was also inordinate delay in filing the application. In the circumstances, leave to apply for an order of committal was hereby dismissed. (paras 38 & 39)
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Case(s) referred to:

- Chandra Sri Ram v. Murray Hiebert* [1997] 3 CLJ Supp 518 HC (*refd*)
Dato' Oon Ah Baa & Ors v. Eagle & Pagoda Brand Teck Aun Medical Factory & Ors [2003] 7 CLJ 81 HC (*refd*)
- E *Dewan Perniagaan Melayu, Malaysia, Negeri Johor v. Menteri Besar Johor & Ors* [2016] 1 CLJ 52 HC (*refd*)
Foo Khoon Long v. Foo Khoon Wong [2009] CLJU 850; [2009] 1 LNS 850 HC (*refd*)
Ha Oi Yan v. M/s Betong Development Sdn Bhd & Ors [1996] CLJU 20; [1996] 1 LNS 20 HC (*refd*)
In Re Bramblevale Ltd [1970] 1 Ch 128 (*refd*)
- F *Kijal Resort Sdn Bhd v Pentadbir Tanah Kemaman & Anor* [2015] 3 CLJ 861 FC (*refd*)
Malaysian Bar v. Tan Sri Dato' Abdul Hamid Omar [1989] 2 CLJ 373; [1989] 1 CLJ (Rep) 92 SC (*refd*)
Messrs Tai Choi Yu & Co, Advocates v. Arifin Zakaria & Anor [2020] 2 CLJ 508 CA (*refd*)
Peguam Negara Malaysia v. Chin Chee Kow [2018] CLJU 1273; [2018] 1 LNS 1273 CA (*refd*)
- G *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849 FC (*refd*)
Tiger Powerhitz Sdn Bhd v. Guinness Anchor Marketing Sdn Bhd [2003] 5 CLJ 78 HC (*refd*)
- H *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal* [1993] 3 CLJ 210 SC (*refd*)

Legislation referred to:

- Federal Constitution, art. 42
Rules of Court 2012, O. 52 r. 3(2), O. 53 r. 3(3)
- I *For the applicant - Muhammad Shafee Abdullah, Muhammad Farhan Shafee, Wan Mohammad Arfan Wan Othman & Syafiqah Sofian; M/s Shafee & Co*
For the respondent - Shamsul Bolhassan, Ahmad Hanir Hambaly & Nurhafizza Azizan; SFCs & Safiyah Omar, Ainna Sherina Saipolamin & Zulkiefl Sulaiman; FCs

Reported by Suhainah Wahiduddin

JUDGMENT

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Alice Loke Yee Ching J:**Introduction**

[1] Enclosure 130 is the applicant's application for leave to apply for an order of committal pursuant to O. 52 of the Rules of Court 2012. The order of committal is sought to be applied for against the respondent who was the Attorney General at the time of the events described in the judicial review application.

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[2] Enclosure 130 is supported by the following:

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- (i) statement filed pursuant to O. 52 r. 3(2) of the Rules of Court 2012 dated 22 May 2025; and
- (ii) an affidavit verifying facts affirmed by Dato' Sri Mohd Najib bin Tun Hj Abd Razak on 19 May 2025.

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Key Background Facts

[3] The background facts commencing from the sentence imposed on the applicant, his application for pardon and the decision of the Pardons Board which set the stage for the application by the applicant is not in dispute. The O. 52 statement filed in support of this leave application states as follows:

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- (i) on 4 July 2018 and 8 August 2018, the applicant was charged in the Kuala Lumpur High Court bearing Criminal Suit No(s): WA-45-2-07-2018; WA-45-3-07-2018; and WA-45-5-08-2018, commonly known as the *SRC* case where he was found guilty and convicted of all charges on 28 July 2020;
- (ii) on 30 July 2020, the applicant appealed to the Court of Appeal against the decision of the High Court wherein on 8 December 2021 his appeal was dismissed. The conviction and sentence of the High Court was upheld;
- (iii) on 8 December 2021, the applicant appealed to the Federal Court against the decision of the Court of Appeal wherein on 23 August 2022, his appeal was again dismissed;
- (iv) consequent upon the decision of the Federal Court, the applicant was brought to the Kajang Prison to serve a term of 12 years imprisonment. He also had to pay a fine of RM210 million;
- (v) on 1 September 2022, the applicant, through his solicitors Messrs Shafee & Co, filed a petition for a complete and/or full pardon to Kebawah Duli Yang Maha Mulia Seri Paduka Baginda Yang Di-Pertuan Agong XVI ("DYMM YDPA XVI") in relation to his conviction and sentence in the *SRC* case, pursuant to art. 42 of the Federal Constitution;

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- A (vi) following the petition filed on 1 September 2022, the applicant filed further addendums to DYMM YDPA XVI on 18 October 2022 and 20 April 2023 for His Majesty's consideration, raising other new relevant developments in relation to the issue of pardon, particularly the dominant issue that the applicant had never been given a fair trial, nor a fair appeal; and
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- (vii) on 2 February 2024, the Pardons Board for the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya, under the purview of the Minister in the Prime Minister's Department (Law and Institutional Reform) and the Director General of the Legal Affairs Division
- C (Bahagian Hal Ehwal Undang-Undang), announced that DYMM YDPA XVI had convened the 61st Pardons Board for the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya, initially on 8 December 2023, then adjourned to 15 January 2024, and was finally convened again on 29 January 2024. His Majesty ordered that the applicant's imprisonment be reduced to six years and the fine reduced to RM50 million ("main order").
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- [4] By a series of incidents commencing 12 February 2024, the applicant states that he came to know of the existence of what is referred to as the addendum order, which allowed the applicant to serve the remainder of his reduced prison sentence under home arrest. However, this addendum order was not announced when the main order was announced on 2 February 2024. The applicant's solicitors then wrote to several parties including the respondent, who was then the Attorney General, to confirm the details of the addendum order as latter had direct knowledge of the addendum order. As
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- F his inquiries met with no response, he then filed the instant judicial review application on 1 April 2024.
- [5] An application for JR has to be preceded with leave. Leave was set down for hearing on 4 April 2024. The provisions of O. 53, makes it obligatory for the application for leave to be served on the Attorney General's Chambers ("AGC"). To avoid any confusion with the leave application herein, the leave application in O. 53 proceedings shall hereinafter be referred to as the "O. 53 leave".
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- [6] On the eve of the hearing of the O. 53 leave, the AGC issued a letter dated 3 April 2024 stating its grounds of objection to the leave application; firstly, the application was frivolous and vexatious, and secondly, the facts stated therein did not disclose an arguable case and was speculative in nature, and finally, that the ultimate subject matter of the application was non-justiciable nor amenable to judicial review.
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- [7] The O. 53 leave was eventually heard on 3 July 2024. Upon hearing, counsel for the applicant and Senior Federal Counsel, the High Court dismissed the O. 53 leave application. An appeal was filed thereafter to the
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Court of Appeal. At the hearing of the appeal, an application was made by the applicant to introduce additional evidence, *inter alia*, the addendum order.

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[8] By a majority decision, the notice of motion to introduce additional evidence was allowed by the Court of Appeal on 6 January 2025. The appeal against the refusal for O. 53 leave was also allowed. The AGC's appeal to the Federal Court against this decision was dismissed on 13 August 2025 as a consequence of which, the judicial review application is now to be heard on its merits.

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Leave To Apply For An Order For Committal

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[9] Order 52 r. 3(2) provides that the application for leave to apply for an order for committal must be supported by a statement setting out, *inter alia*, the grounds on which the committal is sought. The applicant has, in paras. 42 to 57 of the statement set out not only the grounds, but also the factual matrix to support the grounds.

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[10] In perusing the grounds, it is clear that the present application is premised primarily on one crucial fact; the addendum order exists and that the respondent was fully aware of it. The applicant also contends that there is evidential basis to substantiate its existence and the respondent's knowledge, which he sets out in great length both in the O. 52 statement and the affidavit verifying the facts.

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[11] The applicant then contends that in view of its existence, it was not open to the respondent to direct his officers to oppose the O. 53 leave on the ground that the existence was speculative. To do so was misleading, a blatant representation and tantamount to perverting the course of justice. The respondent is also said to have breached his duty of candour and transparency by suppressing information on the existence of the addendum order. His actions clearly influenced the decision of the learned judge hearing the O. 53 leave, which resulted in him dismissing the leave application.

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Analysis

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Governing Principles

[12] I shall start by stating the relevant principles governing contempt proceedings. Contempt has been given judicial definition in decided cases, and in this regard, reference is made to that enunciated by Federal Court in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849 where it was held:

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[26] Contempt has been reclassified either as (1) a specific conduct of contempt for breach of a particular court order; or (2) a more general conduct for interfering with the due administration or the course of justice. This classification is better explained in the words of Sir Donaldson MR in *Attorney-General v. Newspaper Publishing Plc* at p. 362:

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- A Of greater assistance is the reclassification as (a) conduct which involves a breach, or assisting in the breach, of a court order; and (b) any other conduct which involves an interference with the due administration of justice, either in a particular case or, more generally, as a continuing process, the first category being a special form of the latter, such inference being a characteristic common to
- B all contempts per Lord Diplock in *Attorney-General v. Leveller Magazine Ltd* [1979] AC 440 at p 449.
- [27] This reclassification was adopted by the Court of Appeal in *Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd* [2001] 4 MLJ 577 (CA).
- C [13] Notwithstanding the classification of the categories upon which contempt may arise, the factual situation giving rise to contempt varies and are not exhaustive. In *Chandra Sri Ram v. Murray Hiebert* [1997] 3 CLJ Supp 518; [1997] 3 BLJ 318; [1997] 3 MLJ 240 at 270, it was held:
- D The circumstances and categories of facts which may arise and which may constitute contempt of court, in a particular case, are never closed. This is the same position as in the case of negligence in which the scope for development is limitless. Contempt of court may arise from any act or form whatsoever, ranging from libel or slander emanating from any contemptuous utterance, news item, report or article, to an act of disobedience to a court order or a failure to comply with a procedural requirement established by law. Any of these acts, in varying degrees,
- E affects the administration of justice or may impede the fair trial of sub judice matters, civil or criminal, for the time being pending in any court.
- F The particular matrix of the individual case is of paramount importance in determining whether a particular circumstance attracts the application of the law of contempt. Hence, a positive perception of the facts is a prerequisite in deciding whether or not there is any contravention necessitating the invocation of the law of contempt.
- [14] From the judicial pronouncements above, it is clear that whether an act amounts to an interference with the due administration of justice and is therefore contempt, depends on the circumstances of each case.
- G [15] It is also settled law that committal proceeding is criminal in nature since it involves the liberty of the alleged contemnor. (See: *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849; [2012] 3 MLJ 458, *In Re Bramblevale Ltd* [1970] 1 Ch 128).
- H [16] In view of the consequences, the law provides for procedural safeguards in committal proceedings, of which require strict adherence to. (See: *Dewan Perniagaan Melayu, Malaysia, Negeri Johor v. Menteri Besar Johor & Ors* [2016] 1 CLJ 52; [2016] 7 MLJ 1).
- I [17] These procedural requirements are housed in O. 52 of the Rules of Court 2012 which provide for an application for an order of committal to precede with leave. Whilst the rules make no mention of how the

requirement as to leave is to be satisfied, there are sufficient judicial pronouncements on the matter. It is now trite law that the applicant must establish a *prima facie* case of contempt for leave to be satisfied. (See also: *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal* [1993] 3 CLJ 210; [1993] 2 MLJ 217, *Dato' Oon Ah Baa & Ors v. Eagle & Pagoda Brand Teck Aun Medical Factory & Ors* [2003] 7 CLJ 81, *Foo Khoon Long v. Foo Khoon Wong* [2009] CLJU 850; [2009] 1 LNS 850; [2009] 9 MLJ 441).

[18] The satisfaction of the *prima facie* case and the applicable standard to be applied was enunciated by Justice Nazlan JC (as he then was), in *Dewan Perniagaan Melayu, Malaysia, Negeri Johor v. Menteri Besar Johor & Ors* (*supra*) where he held:

Accordingly, it is my view that the proposition in law that can be distilled from the foregoing authorities is that given the nature of the leave application which is on the basis of *ex parte*, **the applicant would only need to establish a *prima facie* case of contempt on a balance of probabilities**, focusing on the evaluation of the O. 52 statement (to determine there is contempt, and that the grounds are not inherently improbable). (emphasis added)

[19] Bearing in mind the applicable principles, it leaves me now to consider the application for leave, and whether a *prima facie* case of contempt has been demonstrated.

Decision Of This Court

[20] In deciding this application, I am mindful that I ought not to descend into the arena which properly belongs to the substantive judicial review. To reiterate, the applicant's case is premised on the fact of the existence of the addendum order. At the outset, it needs to be mentioned that notwithstanding the fact that the addendum order was allowed to be admitted as evidence for the purpose of judicial review hearing, the question as to the validity and effect of the addendum order are still live issues to be determined at the substantive hearing.

[21] Having duly considered the application for leave I am of the view that leave ought not to be granted. My reasons are as follows.

Role Of AG At Leave Stage

[22] The complaint of the applicant is premised essentially on the stand taken by the AGC officers when served with the application for the O. 53 leave, evident by the contents of the letter dated 3 April 2024. The letter was addressed to the Registrar of the High Court stating that the AGC intend to object to the leave on the following grounds:

- (i) The application framed by the Applicant is frivolous and vexatious;
- (ii) There is no arguable case and that the application is speculative in nature; dan
- (iii) The ultimate subject matter of the application is non-justiciable to judicial review.

A [23] It is not disputed that the oral arguments presented on the day of hearing were in line with the contents of the said letter.

B [24] The applicant contends that as the respondent possessed direct knowledge of the existence of the addendum order, it was not open to him to take a contrary stand at the O. 53 leave by directing his officers to take the position they did.

C [25] This is where the misconception of the applicant lies. At the leave stage, the respondent wears a different hat. The position of the AG at the O. 53 leave stage emanates from the provision of O. 53 r. 3(3). The rules provide that the notice of the application for leave is to be given to the AGC not later than three days before the hearing date. Copies of the statement and affidavit must be lodged with the AGC at the same time. The lodging of the documents allows the AGC to peruse the documents in support of the application for the judicial review, and to enable it to oppose, if warranted.

D [26] The Rules of Court are not mere ornaments; they are to be adhered to for a purpose. In this regard, the provision mandating service of leave application on the Attorney General's Chambers is to enable it to fulfil its role in O. 53 proceedings, as enunciated in a long line of cases as follows:

E (i) in *Messrs Tai Choi Yu & Co, Advocates v. Arifin Zakaria & Anor* [2020] 2 CLJ 508; [2020] 5 MLJ 207, the Court of Appeal held:

F [20] Further, in a judicial review application, under O. 53 of the Rules of Court 2012, the application must be served on the attorney general. This rule is based on the principle that judicial review is a principal tool of 'public law' applicable to 'public' bodies. As public bodies impliedly attract public interest and the guardian of public interest is the attorney general, this makes the attorney general a nominal party in all judicial review applications. The intention of the rule is to ensure that the attorney general vets all judicial review applications in order to ascertain if his participation is warranted. Whether the attorney general elects to appear or not is solely his discretion and if he elects to appear, the court is bound to give a hearing: *Kanawagi a/l Seperumaniam v. Dato' Abdul Hamid bin Mohamad* [2004] 5 MLJ 495. It has also been held that the attorney general's role in the public interest is safeguard public authorities or public institutions by deterring or eliminating clearly ill-founded claims without the need for them to become a party to litigations and to prevent public administrative actions from being paralysed: *Peguam Negara Malaysia v. Nurul Izzah bt Anwar & Ors* [2017] 4 MLJ 656.

H (ii) in *Kijal Resort Sdn Bhd v Pentadbir Tanah Kemaman & Anor* [2015] 3 CLJ 861; [2016] 1 MLJ 544, the Federal Court held:

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[129] In the present case the first respondent is Pentadbir Tanah, Kemaman; and the second respondent is a company known as Maju Timor Sdn Bhd. The first respondent is represented by the State Legal Advisor of Terengganu, while the second respondent is represented by a private lawyer. It is not disputed that neither of them was present in court at the hearing of the application for leave. Besides the appellant's counsel, an officer from the Attorney General's Chambers was present in court at the hearing for leave. His presence in court was based on the notice given by the appellant under O. 53 r. 3(2) of the RHC 1980 which requires that: The applicant must give notice of the hearing of the application for leave not later than three days before the hearing date to the Attorney General's Chambers and must at the same time lodge in those chambers copies of the statement.

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[130] The presence of the officer from the Attorney General's Chambers throughout the proceeding does not mean that he was representing the first respondent particularly when the application for leave was made *ex parte* ...

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(iii) finally, in *Peguam Negara Malaysia v. Chin Chee Kow* [2018] CLJU 1273; [2018] 1 LNS 1273, the Court of Appeal held:

[16] On this first issue, we wholly agreed with the learned SFC that the law does not require the Attorney General to file any affidavit in reply at the leave stage ... The court was not concerned with the merit of the application as the leave stage was merely to sieve out frivolous application and to see whether the applicant had an arguable case.

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[27] To summarise, the law on the role of the AG *vis-à-vis* O. 53 leave is trite. He functions to sieve unmeritorious suits which include not only those that do not meet the procedural requirements set out therein, but which decided cases have termed as those which do not meet the threshold of an arguable case.

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[28] Therefore, all that the AGC is required to do when served with the leave papers is to peruse them and address the court on whether there are grounds to refuse leave or otherwise. The AGC does not delve into the merits of the substantive judicial review application even if the AGC is to subsequently represent any of the respondents cited once leave is granted.

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[29] In the instant case, the Attorney General is a putative respondent in these judicial review proceedings. However, the position of the Attorney General at the O. 53 leave and where he is cited as a respondent in the substantive hearing are distinct and different. In the case of the former, the AG was served not in his capacity as a respondent but in his capacity as the AG under O. 53 r. 3(3) of the Rules of Court 2012. To reiterate, in a leave application, he merely embarks on a filtering process through his officers.

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A Where there are reasons to oppose leave pursuant to decided authorities on the threshold to be met, then officers of AGC will attend court to present their arguments.

[30] To my mind, it is pure conjecture to attribute dishonourable conduct on the part of the respondent merely from the stand taken to oppose the leave application. The act of contempt alleged is the direction given by the respondent to advance false arguments and deny the existence of the addendum order. In the absence of clear evidence showing that the respondent personally did as alleged and bearing in mind the role AGC plays in O. 53 leave applications, these allegations are but mere speculation. One cannot infer a specific instruction to present untrue arguments only from the stand the respondent's officers took in opposing the leave application. The consequences of contempt proceedings are serious, and this court would be circumspect to act on mere supposition.

Reliance On Subsequent Events

D [31] The applicant appears to be relying on subsequent events to retrospectively allege a case of contempt. The addendum order was only sought to be introduced during the appeal in the Court of Appeal. Upon being allowed to introduce the addendum order, the applicant now contends that it exists and that the respondent was aware of it all along and must therefore be called to account for misrepresenting otherwise.

E [32] However, it is apparent that at the time of filing the leave application, even the applicant was uncertain as to its existence. This is evident from the terms of the prayers (1) and (2) sought in the judicial review application which reads:

1. An order of *mandamus* that all the Respondents or any of them be compelled to answer and/or confirm the existence of an Addendum Order dated 29.01.2024 issued by His Majesty Seri Paduka Baginda Yang Di-Pertuan Agong XVI as a supplementary order to the Main Order dated the same (the latter of which allowed the reduction of the Applicants imprisonment term and the fine imposed ("Main Order")) and the former in respect of the Applicant being ordered to serve his said reduced term of imprisonment under "house arrest" or terms to the equivalent effect ("Addendum Order"));
2. An order of *mandamus* that should the Addendum Order exist, all the Respondents or any of them be compelled to execute the said order of His Majesty Seri Paduka Baginda Yang Di-Pertuan Agong XVI and to forthwith remove the Applicant from the Kajang prison facility to his known residence(s) in Kuala Lumpur where the Applicant would continue to serve his imprisonment sentence under house arrest;

I [33] In view of the relief framed, the AGC was justified in making the objection to the leave application.

Duty Of Candour

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[34] The duty of candour argument advanced by the applicant's counsel is misconceived. It ignores the procedural framework in which the AG functions in an O. 53 leave application. Implicit from the authorities on the duty of the AG when served with the leave application, is that there is no such duty imposed on the respondent in the position of the AG at the leave stage. In *Chin Chee Kow (supra)*, the Court of Appeal held:

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[16] On this first issue, we wholly agreed with the learned SFC that the law does not require the Attorney General to file any affidavit in reply at the leave stage. At the leave stage, the Attorney General in this appeal was served not in his capacity as a respondent but in his capacity as the attorney general under O. 53 r. 3(3) of the Rules of Court 2012. He could choose not to appear, but when he appeared, through the learned SFC, the court had no jurisdiction not to hear him. The court was not concerned with the merit of the application as the leave stage was merely to sieve out frivolous application and to see whether the applicant had an arguable case.

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[35] The Malaysian position is unlike that of the UK where statutory reforms undertaken to the procedural rules, resulting in the filtering role of the AG at the leave stage being abolished. There is direct involvement of the parties at the leave stage thus giving rise to the duty of candour. The Rules of Court 2012 have not adopted these changes.

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[36] In the upshot, contrary to the arguments advanced by counsel for the applicant, there is no duty for the respondent to deny or confirm the existence of the addendum order at the leave stage.

Inordinate Delay

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[37] There is inordinate delay in commencing the contempt proceedings. The premise of the contempt proceedings arises from the stance taken in the leave application. The objection the AGC intended to take was made known as early as 3 April 2024. Yet, it was only one year later that the contempt proceedings was filed on 21 May 2025. Authorities on the issue of delay were submitted by the AG, for which I have found to be of valuable guidance as follows:

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- (i) *Malaysian Bar v. Tan Sri Dato' Abdul Hamid Omar* [1989] 2 CLJ 373; [1989] 1 CLJ (Rep) 92; [1989] 2 MLJ 281, the Supreme Court held:

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Finally, there has certainly been an inordinate delay in making the application. The resolution of the Malaysian Bar to institute proceedings for contempt was passed on 19 July 1988. The application for leave was filed on 24 April 1989. There was no explanation for the delay in the affidavit of the secretary of the Bar. The allegation of contempt is a serious matter and should be

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- A pursued within a reasonable time. The delay must be explained. In our view a lapse of nearly nine months unexplained in the affidavit is not reasonable.
- (ii) *Tiger Powerhitz Sdn Bhd v. Guinness Anchor Marketing Sdn Bhd* [2003] 5 CLJ 78; [2003] 1 MLJ 314, it was held:
- B The other factor to be considered is the delay in making the application by the plaintiff. In this case there was a delay of almost 15 months by the plaintiff in filing the application for leave to institute committal proceedings. The plaintiff did not offer any explanation for the delay.
- C (iii) *Ha Oi Yan v. M/s Betong Development Sdn Bhd & Ors* [1996] CLJU 20; [1996] 1 LNS 20; [1996] MLJU 59 ruled as follows:
- The *ex parte* injunction here was taken out in 1992 and the plaintiff only attempted to enforce it after a long lapse of 4 years in 1995. There is no evidence to show that the plaintiff had taken any step to prosecute the injunction speediously (see below).
- D This is tantamount to an inordinate delay and there is no reasonable explanation for this inordinate delay. The inordinate delay without explanation is fatal to the plaintiff's application; and on this ground alone the application for a committal order cannot stand.
- E [38] Thus, the courts have therefore consistently held that contempt being a serious matter, should be pursued within a reasonable time. Guided by the principles enunciated therein, I find the delay fatal to the applicant's application.
- F **Conclusion**
- [39] Premised on the reasons as aforesaid, I am of the view that the applicant has failed to establish a *prima facie* case of contempt. There is also inordinate delay in filing the application encl. 130. In the circumstances, leave to apply for an order of committal is hereby dismissed.
- G [40] As a consequence of the dismissal of encl. 130, I also order that costs of RM20,000 be paid by the applicant to the respondent.

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